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SPECIFIC GROUPS AND INDIVIDUALS: MIGRANT WORKERS

Written statement* submitted by the International Catholic Migration Commission (ICMC), a non-governmental organizations in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[15 January 2002]

*This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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ENG

1. The International Catholic Migration Commission was created in 1951 to serve the needs of refugees and migrants. It has also developed work with internally displaced persons. In fulfilling its mandate, ICMC seeks to utilize, raise awareness about and strengthen relevant international human rights instruments and mechanisms. This written statement examines and makes recommendations for some of the tools monitored and/or developed by the United Nations Commission on Human Rights in the field of migration.

2. The international community has on numerous occasions highlighted the situation of migrant workers around the world and the need for respect for their rights since the 57th session of the Commission on human rights. Governments, many of them members or observers of this Commission widely raised the issue of migration including the rights of migrants at the World Conference against Racism (WCAR)1, during the Global Consultations on International Protection organized by the United Nations High Commissioner for Refugees and on the occasion of the 50th Anniversary of the Council of the International Organisation for Migration. The increase in interregional and intra-regional migration as a result of globalization was recognized by the WCAR. More than ever, the rights enshrined in international human rights instruments, which apply to non-nationals, and which have been consolidated in the International Convention for the Protection of the Rights of All Migrant Workers and Members of their Families are under threat and need to be protected.

3. The Migrant Workers Convention now counts 16 States Parties and 12 signatories. Indications are that other countries are launching ratification processes. The Convention provides that it shall enter into force on the first day of the month following a period of three months after the date of the deposit of the twentieth instrument of ratification or accession. A committee shall then be created for the purpose of reviewing the application of the Convention, consisting initially of 10 experts. The eventual coming into force of the Convention raises a number of issues, which the Commission should reflect upon. These include the setting up a new treaty body, the changing nature of migration issues since the adoption of the 1990 Migrant Workers Convention, the geographical distribution of States Parties and the low representation of host countries, especially from the North.

4. While the international community has in recent years been marking 50th anniversaries in the United Nations and other inter-governmental organisations, it seems the universality so central to the human rights machinery is slow to bear fruit for migrant workers. Western commission member and observer States should come forth and ratify the Convention and avoid sending out a message to the world that migrants are second-class citizens. As the European Union seeks to harmonize its immigration and asylum policies, it is to be hoped that it will not create a two-tier system for privileged "European" people on the one hand and a new generation of rightless persons on the other. It should be remembered that the UN Charter provides for regional arrangements "providing that such arrangements or agencies and their activities are consistent with the Purposes and Principles of the United Nations".

5. Pending a more universal ratification of the Convention, the only mechanism available at the international level to protect the rights of migrants is the Special Rapporteur on the Human Rights of Migrants, established by the Commission in 1999. This thematic mandate is key to raising visibility for the human rights of migrants, particularly in situations of vulnerability, including in instances of trafficking. Within the framework of increased collaboration amongst UN agencies

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1 See ICMC report on the WCAR for further reference, www.icmc.net

and relevant other organisations, ICMC encourages the Special Rapporteur to keep monitoring and feeding the follow up of the UNHCR Global Consultations information and comments on the Migration and Refugee interface. ICMC welcomed the Special Rapporteur's participation in IOM policy dialogue on migration. ICMC strongly recommends the mandate's continued input into any other relevant regional or international initiatives around the setting up of an international migration framework in order to inject a human rights dimension into relevant processes.

6. In view of the broad array of violations of the human rights of migrants, other relevant thematic mechanisms, such as the Working Group on Arbitrary Detention and the Special Rapporteur on Torture should keep monitoring the situation of migrant workers.

7. One unchallenged success of the WCAR is the broad sections devoted to migrants and refugees. Recommendations to governments, inter-governmental organisations and NGOs cover a wide spectrum of protection issues in relation to racism, xenophobia and non-discrimination. The need for States to protect the rights of migrants, regardless of their immigration status is recognized. The WCAR urges States to develop and implement preventive measures including reviewing and revising, where necessary, their immigration laws, organizing specialized training courses for administrators, police officers, immigration officials and other interested groups, promoting the recognition of diplomas and promoting the enjoyment by migrants of rights to work, access to social security, health, education etc.

8. Central to ICMC's mandate are the needs of the most marginalized and extremely vulnerable individuals including undocumented migrants and trafficked persons, in particular women and children. In many countries where their workforce is much sought after, large groups of long-established migrants in irregular situations are systematically exploited and forced into leading underground lives in undignified conditions and utter lack of security. Amongst those are to be found women and children reduced in virtual slavery, bonded-labour and sexual exploitation.

9. A marked phenomena at the end of the old millennium and the start of the new, has been a substantial worldwide increase in international migration of women in search of work. This trend has been linked to many factors including economic down-turns and reform programs that reduce opportunity for women to work in their own countries in public sectors such as health care, or those policies which reduce expenditure and opportunities in education for girls and young women. Such migration puts women and children at risk of a wide range of human rights abuses, but in particular many are forced to endure physical or sexual violence; for example, it is not uncommon for maids to be sexually harassed by their employers, or a young woman from economically brittle states to be tricked into working as a prostitutes in richer countries. It is remarkably difficult for women and children to then escape from these situations. Typically migrant women (both those legally and illegally resident in a country) are lacking in skills and education, and have little ability to understand or fight for their rights.

10. In most countries migrant victims of sexual and physical abuse have little legal redress, and are more commonly treated as criminals whereas their exploiters face little if any possibility of prosecution. In some cases migrant women who have fought back against the violence of their employers have received death penalties or long prison sentences. In other cases child migrants who have complained to authorities about abuse have suffered additional violence at the hands of the authorities. No civilisation can allow that human beings should be made to live in sub-human conditions.

11. ICMC Recommends that the Commission on Human Rights:

- Request the Office of the High Commissioner for Human Rights to organize a small preparatory technical meeting to look into implications of the coming into force of the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;

- Renew the mandate of the Special Rapporteur on the Human Rights of Migrants for another three years;

- Request the Special Rapporteur to submit an interim report to the General Assembly;

- Encourage the Working Group on Arbitrary Detention to look at growing instances of systematic of detention of migrants around the world;

- Encourages the Special Rapporteur on Torture to look at the treatment of persons during forcible returns including so-called "assisted" returns of irregular migrants and rejected asylum-seekers;

- Draw attention of its members to relevant WCAR Declaration and Programme of Action provisions on migrants and ask them to report on progress or obstacles encountered in implementing those provisions to the HCHR anti-discrimination Unit;

- Encourage its members to cooperate with the High Commissioner for Human Rights in fulfilling paragraph 196 of the WCAR Programme of Action, requesting the Office " to pay special attention to violations of the human rights of victims of racism, racial discrimination, xenophobia and related intolerance, in particular migrants, including migrant workers, to promote international cooperation in combating xenophobia and, to this end, to develop programmes which can be implemented in countries on the basis of appropriate cooperation agreements;"

- Encourage States to consider launching regularisation processes, with particular reference to cases where the national labour market has demonstrated the need for foreign workers and its ability to absorb them over the years;

- Urge States to enact legislation criminalizing users and exploiters of persons (particularly increased prosecution of the users of trafficked women and child prostitutes including across national boundaries, standardisation of international legal instruments to make it possible and usual, for example, to prosecute nationals for related crimes committed in foreign countries);

- Recommend increased investigation and decisive action by UN agencies, peace keeping operations and international non-governmental organizations against their own staff members who engage in sexual and labour exploitation of migrants, including trafficked persons, especially women and children;

- Recommends that States, UN Agencies, inter-governmental organisations and international financial institutions allocate increased funding for economic programs that target job creation schemes for young women, single mothers and divorcees. And for services for women and children victims of domestic, physical and sexual violence.